MORGAN PERUMAL

v

KETUA INSPEKTOR HUSSEIN ABDUL MAJID & ORS

HIGH COURT MALAYA, JOHOR BAHRU
DATO' ABDUL MALIK ISHAK J
[MISCELLANEOUS CRIMINAL APPLICATION NO: 44-5-1996]
8 JUNE 1996

HABEAS CORPUS: *Whether arrest and detention illegal – Whether Article 5 of the Federal Constitution complied with – Sections 3(3)(a), 3(3)(b) & 3(3)(c) Emergency (Public Order and Prevention of Crime) Ordinance 1969 – Proper construction – Documents mentioned in sections – Whether detainee entitled to documents.*

In this application for *habeas corpus* the applicant alleged that his arrest and detention was illegal on the grounds, *inter alia*, that the detaining authority had contravened Article 5(3) of the Constitution, in that he was not informed of the grounds of his arrest and not allowed to consult a legal practitioner of his choice, and secondly, that he was not served with the documents referred to in ss. 3(3)(a), 3(3)(b) and 3(3)(c) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 (the Emergency Ordinance). It was not in dispute that the relevant documents as mentioned in the sections had not been served on the applicant. Nonetheless, the affidavits as affirmed by the relevant police officers testified to the fact that the requirements of Article 5 had been fully complied with. This apart, it was not in dispute that the applicant had acknowledged receipt of the relevant detention order when he signed on the reverse portion of the same. The facts also showed that some 20 minutes after the arrest of the applicant, the arresting officer had lodged a police report adverting to his proper conduct in affecting the arrest. Before the learned Judge, the question that arose was whether an order for *habeas corpus* ought to be issued in the circumstances.

Held:

[1] Sections 3(3)(a), 3(3)(b) and 3(3)(c) of the Emergency Ordinance do not require service of the documents mentioned therein. That is a matter of law pure and simple, and the applicant has no right of service of those documents, be it implied or otherwise.

[2] The complaint of the applicant is that he was illegally or improperly detained and that being the case it was up to the detaining authority to justify the detention. In this respect, bearing in mind the fact that the applicant had acknowledged receipt of the detention order by putting his signature on

the reverse side thereof, the detaining authority clearly had the power to detain the applicant, and in so doing there was complete compliance with the law. The detention, hence, was perfectly valid.

[3] There was ample evidence to show that Chief Inspector Hussein through detective Murugiah had conveyed the reasons for the arrest to the applicant. Also, the police report lodged in respect of the arrest put it beyond peradventure that the applicant was indeed informed and knew the reasons for his arrest. In law, this report could be considered to show consistency, such as to render the version that the applicant had been explained the reasons for his arrest "probable" and "reasonably safe to act upon". The "Station Diaries" also showed that the applicant was allowed to consult his lawyer, and therefore, the applicant's allegations in respect of breach of Article 5 of the Constitution had no merits whatsoever. In any case, a complaint by a detainee that he was denied Counsel contrary to Article 5 could not attract *habeas corpus.*

[Application dismissed]

Cases referred to:

Jayaraman & Ors. v. Public Prosecutor [1982] 2 MLJ 273 ***(refd)***

Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Ors. [1993] MLJ 12 SC ***(refd)***

Andrew s/o Thamboosamy v. Superintendent of Pudu Prisons, Kuala Lumpur [1976] 2 MLJ 156 ***(refd)***

Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor. [1994] 3 MLJ 285 SC ***(refd)***

Lye Fong Weng & Anor. v. Deputy Minister of Home Affairs & Anor. [1994] 2 CLJ 626

Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn. Bhd. [1986] I MLJ 382 SC ***(refd)***

Lau Lek Eng & Ors. v. The Minister for Home Affairs, Singapore & Anor. [1972] 3 MLJ 4 ***(refd)***

Theresa Lim Chin Chin & Ors. v. Inspector General of Police [1988] 1 MLJ 293 SC ***(cit)***

Farrell v. Alexander [1977] AC 59 [1976] 2 All ER 721, [1976] 3 WLR 145 ***(refd)***

Hatton v. Beaumont [1977] 2 NSWLR 211 ***(refd)***

Young v. Farrah & Nicholas Enterprises Pty Ltd. [1976] 13 SASR 444 ***(refd)***

Karam Singh v. Minister of Home Affairs [1969] 2 MLJ 129 ***(refd)***

Sukumaran s/o Sundram v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor [1995] 1 AMR 919 ***(refd)***

Inspector General of Police & Anor. v. Lee Kim Hoong [1979] 2 MLJ 291 ***(refd)***

Re P. E. Long @ Jimmy & Ors.; P.E. Long & Ors. v. Menteri Hal Ehwal Dalam Negeri Malaysia & Ors. [1976] 2 MLJ 133 ***(refd)***

Mohamed Ali v. Public Prosecutor [1962] 28 MLJ 230 ***(foll)***

Liew Wah Ming v. Public Prosecutor [1963] 29 MLJ 82 ***(foll)***

Ah Mee v. Public Prosecutor [1967] 1 MLJ 220 FC ***(foll)***

Karthiyayan & Anor. v. Lee Leong Sin & Anor. [1975] 1 MLJ 119 FC ***(foll)***
Public Prosecutor v. Lee Ah Ha [1989] 1 MLJ 120 ***(refd)***
M. Raman v. Ayavoo [1957] 23 MLJ 14 ***(refd)***
State of Bombay v. S.L. Apte AIR [1961] SC 578 ***(cit)***
Manipur Administration v. Bira Singh AIR [1965] SC 87 ***(refd)***
Jamali bin Adnan v. Public Prosecutor [1986] 1 MLJ 162 ***(refd)***
London Tramways Co. v. London County Council [1898] AC 375 ***(refd)***
Yit Hon Kit v. Minister of Home Affairs, Malaysia & Anor. [1988] 2 MLJ 638 ***(foll)***

Legislation referred to:
Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3(3)(a), (b), (c)
Federal Constitution, Articles 5, 7(2)
Criminal Procedure Code, s. 302

For the applicant - RR Mahendran; M/s. R.R. Mahendran & Co.
For the respondents - Mohamad Abazafree Mohd. Abas; Federal Counsel

JUDGMENT

Abdul Malik Ishak J:

This was an application for *habeas corpus*. In a nutshell the facts may be stated thus. On 13 January 1996 at 2.40 a.m., Chief Inspector Hussein bin Abdul Majid ("Chief Inspector Hussein") led a police party to the compound of Hospital Sultanah Aminah, Johor Bahru and there the applicant, who was there at the material time, was placed under arrest. Without furtherado, Chief Inspector Hussein explained in Bahasa Malaysia the reason for the arrest to the applicant *via* an intermediary, one detective lance corporal Murugiah a/l P. Maniam ("detective Murugiah"), who then explained in Bahasa Tamil to the applicant. In encl. 13, Chief Inspector Hussein deposed that he explained to the applicant the reasons for the arrest in these words

> Bahawa kamu ditangkap dibawah s. 3(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969 kerana ada sebab-sebab mempercayai bahawa ada alasan-alasan bagi mematutkan kamu ditahan dibawah s. 4(1).

Detective Murugiah corroborated the version of Chief Inspector Hussein in two affidavits (encl. 10 and 15) and, particularly in encl. 15, it was deposed that the applicant understood the reasons for his arrest through the interpretations of the said detective. In my judgment, it is not necessary for detective Murugiah to employ academic, classical or professional Tamil language in interpreting the reasons for the arrest to the applicant; a colloquial or ordinary conversational Tamil language would suffice (*Jayaraman & Ors. v. Public Prosecutor* [1982] 2 MLJ 273).

It was the plank of the applicant's case that he was not told as soon as may be of the grounds of his arrest and the applicant in his affidavit at encl. 20 in para 12 deposed that he saw Ponnamah a/p Sumdarum ("Ponnamah") and

Sellam a/p Ramasamy ("Sellam") on 15 January 1996 at about 3.00 p.m. outside the second floor of the Police Contingent Johor and there he had occasion to complain to them of three misfits:

(a) that the police did not inform him the reasons for his arrest;

(b) that the police tortured and injured him; and

(c) that he wanted them to employ a lawyer in order to be set at liberty.

Ponnamah and Sellam affirmed an affidavit each on 12 February 1996 and there they corroborated this part of the applicant's version (see encl. 3 and 5 respectively). It is pertinent to point out that the allegations of assault as advanced by both Ponnamah and Sellam were worthless as on the authority of *Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri & Ors.* [1993] 1 MLJ 12 SC, they can be considered as mere hearsay and consequently, inadmissible. Be that as it may, Article 5(1) of the Federal Constitution enacts that:

> No person shall be deprived of his life or personal liberty save in accordance with law.

Article 5 (3) of the Federal Constitution enacts that:

> Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.

Suffian LP in *Andrew s/o Thamboosamy v. Superintendent of Pudu Prisons, Kuala Lumpur* [1976] 2 MLJ 156 was of the view that any form of detention would run counter to Article 5 (1) of the Federal Constitution and his Lordship held the view that any:

> ... power given by law to detain must be construed strictly and in cases of doubt or ambiguity the Court should lean in favour of the subject. Government is the most powerful body in the country and the Court should be vigilant to see that Government does not exceed its power when dealing with individuals.

On the power of the Executive and the role of the Judges, Suffian LP had this to say in the same judgment particularly at p. 158:

> They (referring to the Executive) have information and sources of information not available to the Court and are moved by political, economic, social and cultural considerations which the Court is not well-equipped to apply, and Judges should be slow to embarrass them into any course of action.

This last passage though uttered in the light of the facts and circumstances and particularly in the context of the Immigration Ordinance, yet it is germane to remember and put in the forefront when considering the present application.

Recently, Wan Yahya SCJ (now FCJ) in *Ng Hong Choon v. Timbalan Menteri Hal Ehwal Dalam Negeri & Anor.* [1994] 3 MLJ 285 SC, speaking for the then Supreme Court, succinctly said:

> Laws which deprive the subject of their rights to personal liberty are subject to strict construction in the same way as penal laws - see *Nagin Singh v. Jagannath* AIR 1944 Lah 422. It is a recognized principle of interpretation that laws which encroach on the rights of the subject should be construed in conjunction with laws which guarantee the subjects, fundamental rights to freedom - in our instant case, Article 5 of the Federal Constitution - and whenever possible, to be so construed as to afford respect and recognition of such right - *Walsh v. Secretary of State for India* [1863] 10 BLC 367 in particular at p. 386 per Lord Westbury L.C. The power under the restrictive laws can only be exercised in accordance with the procedure laid down by the law - State of *UP v. Lalai Singh Vadar* [1977] CLR (SC) 121; and in the event of any failure to conform to such procedure, the Court may construe it in favour of the subjects' liberty.

In *Lye Fong Weng & Anor. v. Deputy Minister of Home Affairs & Anor.* [1994] 2 CLJ 626, I did say that:

> With respect, mere reference to r. 3 (2) of the Rules by the Deputy Superintendent in his affidavit is insufficient, without particularisations, bearing in mind the principles that strict compliance with statutory requirements must be observed when depriving a person of his liberty and that since the liberty of a subject being detained without trial is involved, strict statutory compliance must be adhered to. It is now settled law that where personal liberty is concerned, an applicant in applying for a writ of *habeas corpus* is entitled to rely on any technical defect that will ultimately set him at liberty (see *Re Datuk James Wong Kim Min* [1976] MLJ 245 FC; *Ex parte Johannes Choeldi & Ors.* [1960] MLJ 184).

With these principles in mind, I now proceed to review the available evidence. The applicant in long affidavit stretching to para 32 (see encl. 20) made serious allegations against detective Murugiah. The applicant alleged, *inter alia*, that detective Murugiah:

(a) rammed his car towards the applicant while the applicant was walking;

(b) handcuffed and forcibly dragged the applicant inside the police car whilst applicant was being treated at the outpatient ward of the Hospital Sultanah Aminah, Johor Bahru and the applicant fainted in the police car;

(e) on regaining consciousness the applicant found himself in a police lock up;

(d) brutally assaulted the applicant in all manner conceivable. There were kicks, punches, stepping on the applicant's head against the floor, slappings on cheeks, and, of pertinence, putting the applicant's right hand into an open drawer and thereafter closing the drawer forcibly thereby causing severe pain and injury to the applicant's right hand.

These, allegations of assault were vehemently denied by detective Murugiah in his affidavit affirmed on 23 April 1996 as reflected at para. 1.4 of encl. 27 and I have no hesitation to believe the said detective. Malaysia is not a police state. There is law and order in the country. The "gestapo method" purportedly adopted by detective Murugiah is nothing more than a figment of the applicant's imagination in a frantic bid to gain liberty. These allegations as reflected at paras 4 to 25 of encl. 20 were generally and specifically denied by detective Murugiah. As Lee Hun Hoe CJ Borneo (as he then was) said in *Alloy Automotive Sdn. Bhd. v. Perusahaan Ironfield Sdn. Bhd.* [1986] 1 MLJ 382 SC especially at p. 385:

> There is force in the appellant's contention that an affidavit must reply specifically to allegations, and if it does not, then those allegations not replied to must be taken to have been accepted. In *Dawkins v. Prince Edward of Saxe Weimar* [1875-76] 1 QBD 499, 501, Blackburn stated:
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> > Now, upon that, if that is the true state of the case we are of opinion that no cause of action can be shown. Colonel Dawkins does not meet that in the affidavit in reply...

I cannot help but observe that there were allegations by the applicant in encl. 20 in regard to the manner and conditions of detention which he had to undergo. But unfortunately these are not matters within the scope of cases where *habeas corpus* would normally issue (*Lau Lek Eng & Ors. v. The Minister for Home Affairs, Singapore & Anor.* [1972] 3 MLJ 4). It is germane to say that *Lau Lek Eng's* case was applied with approval in two cases. One was *Theresa Lim Chin Chin & Ors. v. Inspector General of Police* [1988] 1 MLJ 293 SC. The other was *Teoh Yook Huwah v. Menteri Hal Ehwal Dalam Negeri (supra).*

The applicant deposed further in his affidavit at encl. 20 that he was not served with any document to show that he was being detained for more than 24 hours as specified under s. 3(3)(a) of the Emergency (Public Order And Prevention of Crime) ordinance, 1969 ("Emergency Ordinance") and this very document was exhibited in the affidavit of Chief Inspector Hussein at encl. 11. Neither was the applicant served, so it was alleged, with a document authorising the applicant's detention for more than 48 hours as laid out in s. 3(3)(b) of the Emergency Ordinance and, again, this very document was incorporated in the affidavit of Pemangku Timbalan Penguasa Polis Liu Thong Eng in encl. 12. Finally, the applicant took exception to the fact that he was not served with the report of the circumstances of his arrest and detention as set out in s. 3(3)(c) of the Emergency Ordinance and as reflected in the affidavit of Timbalan Penguasa Polis Jamaludin bin Razali in encl. 9 exhibit "JR1". The answers to these issues can be found in the Emergency Ordinance itself. In my judgment, ss. 3(3)(a), 3(3)(b) and 3(3)(c) of the Emergency Ordinance do not require service of those documents. That is a matter of law, pure and simple; and the applicant has no such right of service of those documents, be

it implied or otherwise. For convenience, those sections of the Emergency Ordinance are reproduced below:

> 3 (3) Any person arrested and detained under this section may be detained in police custody for a period not exceeding sixty-days without an order of detention having been made in respect of him under s. 4(1):
>
> Provided that:
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> (a) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;
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> (b) he shall not be detained for more than 48 hours except with the authority of a police officer of or above the rank of Assistant Superintendent;
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> (c) be shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General of Police or to a police officer designated by the Inspector General in that behalf and the Inspector-General or the police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

It is correct to say that in interpreting a statute one must look at the intention of Parliament and that intention can be seen by scrutinising the words employed in the statute. As a judicial interpreter, I have to ask myself and I so do, whether the Legislature intended or could have contemplated that the detainee be served with those documents. Viewed from this perspective and having regard to the words employed, I have no hesitation to hold that there was no legal requirement to serve those documents to the applicant. In *Farrell v. Alexander* [1977] AC 59 at p. 81; [1976] 2 All ER 721 at p. 733; [1976] 3 WLR 145 at page 158, Lord Simon of Glaisdale propounded this proposition which I readily adopt:

> ... in the construction of all written instruments including statutes, what the Court is concerned to ascertain is, not what the promulgators of the instruments meant to say, but the meaning of what they have said. It is in this sense that 'intention' is used as a term of art in the construction of documents.

The following germane observations were made by the Court in *Hatton v. Beaumont* [1977] 2 NSWLR 211:

> The function of the Court ... is to give effect to the intention of the Legislature This it may do without difficulty where it appears from the terms of the legislation that the Legislature directed its attention to the question and expressed an intention upon the effect to be given to the particular provision. But in most cases ... such an intention is not expressed and the Court's task is, by the application of the appropriate principles, to divine or impute that intention.

These authorities propelled me to conclude that there was no necessity to serve those documents to the applicant. I am not prepared to read words into the Emergency Ordinance or to construe it purely by inference or implication

(*Young v. Farrah & Nicholas Enterprises Pty Ltd.* [1976] 13 SASR 444 especially at page 454).

It seems to me from the tenor of the applicant's affidavit in encl. 20, he is complaining that he was illegally or improperly detained and that being the case it was up to the detaining authority to justify that detention (*Karam Singh v. Minister of Home Affairs* [1969] 2 MLJ 129). How would the detaining authority justify that detention? In my judgment, justification for that detention can be garnered from the production of the detention order itself. YB Dato' Megat Junid bin Megat Ayob affirmed an affidavit on 18 March 1996 in encl. 16A and there he deposed that in his capacity as a Deputy Minister of Home Affairs he is empowered to discharge the duties and functions of the Minister of Home Affairs and for such purpose he shall have all the powers of the Minister within the ambit of Article 43A of the Federal Constitution: *Sukumaran s/o Sundram v. Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor.* [1995] 1 AMR 919. In that capacity YB Dato' Megat Junid bin Megat Ayob signed a detention Order under s. 4(1) of the Emergency Ordinance marked as exhibit "MJMA-1" as reflected in encl. 16A which bore the date 12 March 1996 and on the reverse portion of that detention order were typed written words which clearly showed that the applicant had acknowledged receipt of the detention order by putting his signature thereto. In my judgment, the detaining authority has the power to detain the applicant and in so doing there was complete compliance with the law in every way conceivable and, consequently, the detention was perfectly valid.

Reverting back to the allegation that the police did not inform the applicant the reasons for the arrest, Chief Inspector Hussein in his affidavit encl. 11 that was affirmed on 28 February 1996 deposed that on 13 January 1996 at 3.00 a.m. he lodged a police report *vide* Johor Bahru report 1046/96 in regard to the arrest of the applicant. This police report makes for interesting reading and it is worded thus:

> Pada 13 Januari 1996 jam lebih kurang 2.40 pagi dalam "OPS AMANG" saya bersama K/Insp Tai Cheng Boon, K/Insp Mokhtar bin Muhamad dan anggota terdiri daripada D/L/Kpl 97070, 94049, 98603 dan L/Kpl 89379 di perkarangan Hospital Sultanah, Johor Bahru telah menangkap Morgan a/l Perumal KP. A3128534, T/L 31/7/1973, Alamat Bt. 11, Kg. India, Ulu Tiram, Johor Bahru dibawah s. 3(1) Ordinan Darurat 5/69 kerana ada sebab-sebab mempercayai bahawa ada alasan-alasan bagi mematutkan orang kena tangkap ditahan dibawah s. 4(1) Ordinan Darurat (KA & MJ) No: 5/69. Sebaik sahaja menangkap Morgan a/l Perumal KP. A3128534 saya telah memberitahu orang kena tangkap sebab-sebab ia ditangkap dalan bahasa Malaysia dan diterjemahkan oleh D/L/Kpl 97070 Murugiah DALAM BAHASA TAMIL yang mudah difahami.

Two things featured prominently in this police report. Firstly, the applicant was arrested at the compound of Hospital Sultanah (it should be Hospital Sultanah Aminah) Johor Bahru. Secondly, Chief Inspector Hussein explained the reasons for the arrest through Detective Murugiah.

On the requirement that the applicant should be informed of the ground of arrest under the Emergency Ordinance, Harun J (as he then was) said in *Inspector General of Police & Anor. v. Lee Kim Hoong* [1979] 2 MLJ 291 especially at page 292:

> In applying this constitutional provision (referring to Article 5 (3) of the Federal Constitution) to an arrest under s. 3 of the 1969 Ordinance (referring to the Emergency Ordinance), there is no reason why Lee could not have been informed of the grounds of his arrest on 16 February 1969. Now this is precisely the information which his solicitor was seeking on 16 February 1979 and for the next ten days before instituting these proceedings. Even now the applicant, his solicitor and family still do not know. I should make it clear that the police are not being called upon to disclose the evidence which led to the arrest and detention but merely the grounds of arrest. All the police have to say, for example, is that Lee was arrested because we have reason to believe that it is necessary for the prevention of crimes involving violence.
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> I realise the police have a difficult duty to perform to maintain the public peace and security. They should by all means exercise their powers under the law but in exercising these extra-ordinary powers of detention without trial, they should be careful not to raise in the minds of the public any suspicion of tyranny. They cannot avoid such suspicion if a man is detained by them for days without any reason being given. I think, this failure to communicate is the real complaint in this application.
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> On the evidence before me, I am satisfied that the detention of the applicant is in accordance with s. 3 of the 1969 Ordinance.

Though the decision of his Lordship Harun J (as he then was) was upset by the then Federal Court on an entirely different ground (see the decision of Suffian LP in [1979] 2 MLJ 292 FC), this part of the decision of his Lordship Harun J (as he then was) is still good law till today.

The late Arulanandom J in the case of *Re P. E. Long @ Jimmy & Ors.; P.E. Long & Ors. v. Menteri Hal Ehwal Dalam Negeri Malaysia & Ors.* [1976] 2 MLJ 133 after holding that the evidence in that case showed that the detainees were informed by the officers who arrested them of the arest proceeded to remark that:

> ... at this stage any complaint about the arrest of the applicants would appear to be purely academic and of no relevance to an application for a writ of *habeas corpus* again the detention by the applicants order of the Minister for Home Affairs.

On the available evidence, I so hold and it is my judgment that there was ample evidence to show that Chief Inspector Hussein through detective Murugiah had conveyed the reasons for the arrest to the applicant and the police report lodged by the said Chief Inspector put beyond peradventure that the applicant was indeed informed and knew the reasons for his arrest at the compound of the Hospital Sultanah Aminah, Johor Bahru. It was a mere storm

is the teacup when the applicant advanced this point and at the end of the day justice would eventually prevail. Though that police report was not and cannot be said to be a first information report, yet as an "arrest report" it can certainly be considered by this Court for the sole purpose of showing consistency. I am fortified in my view by the passages that appeared in the judgment of Ong J in *Mohamed Ali v. Public Prosecutor* [1962] 28 MLJ 230:

> It will not be out of place here to say a few words about s. 157 of the Evidence Ordinance. Admissibility of a previous statement under that section must not be confused with the weight to be given to it.
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> Corroboration strictly speaking, means independent corroboration as explained in *R v. Baskerville* [1916] 2 KB 658. In my opinion true corroboration by independent evidence from an extraneous source should be distinguished from 'corroboration' as it appears in s. 157, which rests on the principle that consistency between a previous statement by a witness and his present evidence may afford some ground for believing him. The value of such a statement as corroboration may be infinitesimal, as in the majority of cases it is. On the other hand, by reason of the abundance of detail it may contain as to the facts and circumstances surrounding any relevant transaction, it may be capable of being cross-checked for truthfulness against other relevant evidence, in which case, of course, it may be effective corroboration, but only because it has been shown to be true.

The Court of Appeal in *Liew Wah Ming v. Public Prosecutor* [1963] 29 MLJ 82 applied *Mohamed Ali v. Public Prosecutor (supra)* and Hill JA, who wrote a separate judgment had this to say:

> Section 157 is clear and unambiguous and there can be no doubt that in the circumstances laid down in that section a former statement made by a witness is admissible to corroborate his testimony and with the object of showing consistency. But the weight or value of such a statement as corroboration must always be a question of fact and no hard-and-fast rule, capable of mechanical application, can be laid down.

The then Federal Court adopted the same stand in the case of *Ah Mee v. Public Prosecutor* [1967] 1 MLJ 220 FC where Ong Hook Thye FJ, who wrote the judgment of the Federal Court had this to say at p. 222:

> With respect, corroboration in the legal sense connotes some independent evidence of some material fact which implicates the accused person and tends to confirm that he is guilty of the offence: see *Clynes* [1960] 44 Cr. App. R 158, 161 Consistency is not such corroboration and s. 157 of the Evidence Ordinance should be read in the light of my exegesis thereof in the case of *Mohamed Ali (supra)*.

Advancing eight years later, Raja Azlan Shah FJ (as His Majesty then was), in *Karthiyayan & Anor. v. Lee Leong Sin & Anor.* [1975] 1 MLJ 119 FC said in almost the same vein:

> It is settled law that a person cannot corroborate himself but I would appear that s. 157 of the Evidence Act enables a person to corroborate his testimony by his previous statement. The section adopts a contrary rule of English jurisprudence by enacting that former statement of a witness I admissible to corroborate him, if the former statement is consistent wit the evidence given by him in Court. The rule is based on the assumption that consistency of utterance is ground for belief in the witness's truthfulness, just as inconsistency is a ground for disbelieving his. As for myself, although the previous statement made under s. 157 is admissible as corroboration, it constitutes a very weak type of corroborative evidence as it tends to defeat the object of the rule that a person cannot corroborate himself. In my opinion the nature and extent of corroboration necessary in such a case must depend on and vary according to the particular circumstances of each case. What is required is some additional evidence rendering it probable that the story of the witness is true and that it is reasonably safe to act upon it. If a witness is independent, i.e., if he has no interest in the success or failure of a case and his evidence inspires confidence of the Court, such evidence can be acted upon. A witness is normally to be considered independent unless he springs from sources which are likely to be tainted. If there are circumstances tending to affect his impartiality, such circumstances will have to be taken into account and the Court will have to come to a decision having regard to such circumstances. The Court must examine the evidence given by such witness very carefully and scrutinise all the infirmities in that evidence before deciding to act upon it.

Applying the principles of law garnered from these cases, it is my judgment that the police report lodged 20 minutes after the applicant was arrested confirmed by the affidavits of both Chief Inspector Hussein and detective Murugiah gave rise to a strong assumption of consistency thus rendering the version that the applicant had been explained the reasons for his arrest as "probable" and "reasonably safe to act upon it". Even Malek Ahmad J (now JCA) in *Public Prosecutor v. Lee Ah Ha* [1989] 1 MLJ 120 accepted and marked the police report, which was not the first information, as an exhibit as it "was relevant to ascertain whether PW2 had stated in that report as to whether the accused had offered him a $20,000 bribe if PW2 released him as he had told the Court in his testimony".

Next, the applicant alleged that the fourth charge as reflected at encl. 14 of Exh. "HAM2" had been dealt with by the Magistrate's Court at Johor Bahru where he was fined RM500 and, consequently, the plea of *autrefois* convict could be invoked by him. The fourth charge reads as follows:

> Bahawa kamu pada 20 September 1993 lebih kurang 12.30 malam bersama-sama rakan kamu telah menyerang dan mencederakan seorang lelaki dengan bersenjatakan parang di hadapan rumah No. 12, Jalan Keembong 25, Taman Johor Jaya, Johor.

As expected detective Murugiah in his affidavit at encl. 27 denied this allegation.

On the plea of *autrefois* convict, Rigby J in *M. Raman v. Ayavoo* [1957] 23 MLJ 14 had this to say:

> The plea of *autrefois* convict is really a plea in Bar to trial and should be raised before pleading to the charge. However, the appellant was unrepresented at the trial. I may say that the Magistrate, when accepting the appellant's plea of guilty to the charge, was totally unaware of the earlier case under the Minor Offences Ordinance, the facts of which were never brought to his notice. In my view, the plea of *autrefois* convict now raised has no substance and must be dismissed. It is quite clear that, to enable an accused person to rely on that plea, the offence with which he is charged on the second occasion must be the same offence, or practically the same offence, as that with which he was charged on the first occasion. It is not enough to say that the evidence tendered on the second charge was the same evidence as that offered to prove the first charge. It is not the evidence which is material to the charge that governs the plea, but the offence which is charged. (*Kendrick v. Smith 23 Cr. App. R.1*). The offence of voluntarily causing hurt, quite clearly, is a different offence and a more serious offence than the simple charge of disorderly behaviour in a public place; the latter offence being established by the simple fact of two persons brawling in public. As Swift J delivering the judgment in the case of *Kendrick v. Smith* pointed out:
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> > It may well be that the evidence before the Court shows that both these offences have been committed, but that does not make them the same offence ... They are quite distinct and separate.
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> Again, as Aitken J pointed out in the case of *Public Prosecutor v. Surjan Singh* [1939] MLJ 109, in considering the plea of *autrefois* acquit:
>
> > The test is, rather, whether an acquittal on the first charge necessarily involves an acquittal on the second charge; and that is obviously not the case here as the ingredients of these two offences differ considerably from one another, and evidence which would establish the commission of one of them would not necessarily establish the other.
>
> By analogy, the words '*autrefois* convict' may be substituted for the words '*autrefois* acquit', and the same argument applied.

Before me there was no evidence as to the exact charge which the applicant was said to have pleaded guilty to. Neither was the charge sheet nor the notes of proceedings annexed to and exhibited in encl. 20 to enable this Court to peruse through them and verify, with the best available evidence, the allegation of the applicant that he had pleaded guilty to the same offence or practically the same offence before the Magistrate's Court, Johor Bahru.

The words "same offence" meant "an offence whose ingredients whose the same" as laid down in two Indian cases, namely: *State of Bombay, v. S.L. Apte* AIR [1961] SC 578 and *Manipur Administration v. Bira Singh* AIR [1965] SC 87. This approach was adopted by the then Supreme Court in *Jamali bin Adnan v. Public Prosecutor* [1986] 1 MLJ 162 where Seah SCJ, referred to Article 7(2) of the Federal Constitution and s. 302 of the Criminal

Procedure Code in the course of finding an answer to the issue before him. The law journals are replete with authorities on the plea of *autrefois* convict and they are sufficient for me to follow and abide. These authorities were founded on sound legal principles which could not be reargued before me. As Earl of Halsbury LC once said in *London Tramways Co. v. London County Council* [1898] AC 375 especially at p. 376:

> ... the disastrous inconvenience of having each question subject to being reargued and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no real final Court of Appeal?

On the right to Counsel, Woman Inspector Rupiah binti Abdul Wahid affirmed an affidavit on 29 February 1996 as per encl. 8 and there she particularised details which showed the fair treatment meted out to the applicant. The movements of the applicant from the "perharian balai" indicated the following:

(1) On 15 January 1996 the applicant was allowed to see his mother:

(2) On 3 February 1996 the applicant had the opportunity of meeting his family members; and

(3) On 7 February 1996 the applicant was accorded the right to meet and consult his Counsel and in that meeting the applicant's mother was present.

Edgar Joseph Jr. J (as he then was and now a senior member of the Federal Court) in *Yit Hon Kit v. Minister of Home Affairs, Malaysia & Anor.* [1988] 2 MLJ 638 was of the view that the complaint by a detainee while he is under detention that he has been denied access to Counsel contrary to Article 5(3) of the Federal constitution will not attract *habeas corpus*. It seems to me that the same complaint was lodged by the applicant notwithstanding the fact that he was allowed access to Counsel on 7 February 1996. I see no merit in this argument and I had no hesitation in rejecting it forthwith.

Reverting back to the quality of the interpretation from Bahasa Malaysia to Tamil language, it is my judgment that the applicant understood the Tamil language employed by detective Murugiah in interpreting the reasons for the arrest. The several affidavits filed by both Chief Inspector Hussein and detective Murugiah bore out these facts. There is another facet of the case that gives it a different complexion. It is this. The long winded affidavit of the applicant in encl. 20 was in Bahasa Malaysia and the jurat makes for interesting reading as it shows the true colour of the applicant as an individual who was willing to tell lies to gain his liberty. The jurat shows that the affidavit was spread and explained to the applicant in Bahasa Malaysia by Encik Zainal Abidin bin Haji Abas, a Commissioner for Oaths. If the applicant could understand his affidavit that was recorded in good Bahasa Malaysia when it was read and explained to him, I do not see any reason why he should not understand the simple Bahasa Malaysia employed by Chief Inspector Hussein

in explaining the reasons for the arrest. The applicant was born on 31 July 1973 - an era where the educational system placed emphasis on Bahasa Malaysia. As a Malaysian citizen the applicant should be well versed in Bahasa Malaysia. It is pointless to be a Malaysian citizen if the applicant is unable to speak and understand simple Bahasa Malaysia. On the available evidence, it is my judgment that the applicant understood Bahasa Malaysia all along.

For the reasons adumbrated above, I dismissed encl. 2.

Reported by W.A. Sharif